

Senate Bill No. 246

Passed the Senate August 12, 2004

Secretary of the Senate

Passed the Assembly August 4, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

└

CHAPTER _____

An act to amend Section 6159 of the Government Code, to amend Section 1463.007 of the Penal Code, and to amend Sections 19280 and 19283 of the Revenue and Taxation Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 246, Escutia. Courts: fines and penalties: collection.

(1) Existing law, upon approval by the Judicial Council, authorizes a court, city, county, city and county, or other public agency to collect specified payments by credit card, as specified.

This bill would further authorize those entities to collect those payments by debit card or electronic funds transfer.

(2) Existing law authorizes any county or court that implements a comprehensive program to identify and collect delinquent fines and forfeitures with or without a warrant, as specified, if the program includes a specified number of described components.

This bill would expand those described components to include, among others, participation in the Franchise Tax Board's Court-Ordered Debt Collections Program, use of skip tracing or locator resources or services, or use of private debt collectors.

(3) Under existing law, a court is authorized to order fines, fees, penalties, surcharges, or assessments, under varying circumstances. Existing law provides a procedure for the collection of those fines, fees, penalties, surcharges, and assessments by the courts and counties. Until January 1, 2006, existing law provides that delinquent fines, penalties, or restitution imposed by a superior or municipal court or an individual for specified criminal offenses be referred by the county or the state to the Franchise Tax Board for collection in certain instances.

This bill would additionally authorize a superior court to refer those delinquent fines, penalties, and restitution to the Franchise Tax Board for collection, as specified. The bill would require the Franchise Tax Board, in consultation with the Judicial Council, to seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts. The bill would also delete



the repeal date of those provisions thereby extending the provisions indefinitely.

The people of the State of California do enact as follows:

SECTION 1. Section 6159 of the Government Code is amended to read:

6159. (a) As used in this section:

(1) “Credit card” means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) “Card issuer” means any person, or his or her agent, who issues a credit card and purchases credit card drafts.

(3) “Cardholder” means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) “Debit card” means a card or other means of access to a debit cardholder’s account that may be used to initiate electronic funds transfers from that account.

(5) “Draft purchaser” means any person who purchases credit card drafts.

(6) “Electronic funds transfer” means any method by which a person permits electronic access to, and transfer of, money held in an account by that person.

(b) Subject to subdivisions (c) and (d), a court, city, county, city and county, or other public agency may authorize the acceptance of a credit card, debit card, or electronic funds transfer for any of the following:

(1) The payment for the deposit of bail for any offense not declared to be a felony or for any court-ordered fee, fine, forfeiture, penalty, or assessment. Use of a card or electronic funds transfer pursuant to this paragraph may include a requirement that the defendant be charged any administrative fee charged by the company issuing the card or processing the account for the cost of the transaction.

(2) The payment of a filing fee or other court fee.



(3) The payment of any towage or storage costs for a vehicle that has been removed from a highway, or from public or private property, as a result of parking violations.

(4) The payment of child, family, or spousal support, including reimbursement of public assistance, related fees, costs, or penalties, with the authorization of the cardholder or accountholder.

(5) The payment for services rendered by any city, county, city and county, or other public agency.

(6) The payment of any fee, charge, or tax due a city, county, city and county, or other public agency.

(c) A court desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of the Judicial Council. A city desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of the governing body that has fiscal responsibility for that agency.

(d) After approval is obtained, a contract may be executed with one or more credit card issuers, debit card issuers, electronic funds transfer processors, or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer, funds processor, or draft purchaser regarding the presentment, acceptability, and payment of credit and debit card drafts and electronic funds transfer requests.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer, funds processor, or draft purchaser of a reasonable fee or discount.

(4) Any other matters appropriately included in contracts with respect to the purchase of credit and debit card drafts and processing of electronic funds transfer requests as may be agreed upon by the parties to the contract.

(e) The honoring of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or



other public agency as of the date the credit or debit card is honored or the electronic funds transfer is processed, provided the credit or debit card draft is paid following its due presentment to a card issuer or draft purchaser or the electronic funds transfer is completed with transfer to the agency requesting the transfer.

(f) If any credit or debit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit or debit card shall be void. If any electronic funds transfer request is not completed with transfer to the agency requesting the transfer or is charged back to the agency for any reason, any record of payment made by the agency processing the electronic funds transfer shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder or accountholder shall continue as an outstanding obligation as if no payment had been attempted.

(g) Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, a court, city, county, city and county, or any other public agency may impose a fee for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the agency in providing for payment by credit or debit card or electronic funds transfer. These costs may include, but shall not be limited to, the payment of fees or discounts as specified in paragraph (3) of subdivision (d). Any fee imposed by a court pursuant to this subdivision shall be approved by the Judicial Council. Any fee imposed by any other public agency pursuant to this subdivision for the use of a credit or debit card or electronic funds transfer shall be approved by the governing body responsible for the fiscal decisions of the public agency.

(h) Fees or discounts provided for under paragraph (3) of subdivision (d) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer, funds processor, or draft purchaser to the extent not recovered from the cardholder or accountholder pursuant to subdivision (g).

(i) The Judicial Council may enter into a master agreement with one or more credit or debit card issuers, funds processors, or draft purchasers for the acceptance and payment of credit or debit



card drafts and electronic funds transfer requests received by the courts. Any court may join in any of these master agreements or may enter into a separate agreement with a credit or debit card issuer, funds processor, or draft purchaser.

SEC. 2. Section 1463.007 of the Penal Code, as amended by Section 1 of Chapter 62 of the Statutes of 2002, is amended to read:

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect delinquent fees, fines, forfeitures, penalties, and assessments with or without a warrant having been issued against the alleged violator, if the base fees, fines, forfeitures, penalties, and assessments are delinquent, may deduct and deposit in the county treasury or in the trial court operations fund the cost of operating that program, excluding capital expenditures, from any revenues collected thereby prior to making any distribution of revenues to other governmental entities required by any other provision of law. Any county or court may establish a minimum base fee, fine, forfeiture, penalty, or assessment amount for inclusion in the program. This section applies to costs incurred by a court or a county on or after June 30, 1997, and prior to the implementation of a time payments agreement, and shall supersede any prior law to the contrary. This section does not apply to a defendant who is paying fees, fines, forfeitures, penalties, or assessments through time payments, unless he or she is delinquent in making payments according to the agreed-upon payment schedule. For purposes of this section, a comprehensive collection program is a separate and distinct revenue collection activity and shall include at least 10 of the following components:

- (a) Monthly bill or account statements to all debtors.
- (b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.
- (c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.
- (d) Requests for credit reports to assist in locating delinquent debtors.
- (e) Access to Employment Development Department employment and wage information.
- (f) The generation of monthly delinquent reports.



(g) Participation in the Franchise Tax Board's Interagency Intercept Collections Program.

(h) The use of Department of Motor Vehicle information to locate delinquent debtors.

(i) The use of wage and bank account garnishments.

(j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.

(k) The filing of a claim or the filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.

(l) Coordination with the probation department to locate debtors who may be on formal or informal probation.

(m) The initiation of drivers' license suspension actions where appropriate.

(n) The capability to accept credit card payments.

(o) Participation in the Franchise Tax Board's Court-Ordered Debt Collections Program.

(p) Contracting with one or more private debt collectors.

(q) The use of local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.

SEC. 3. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior or municipal court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two hundred fifty dollars (\$250), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the superior court, the county, or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes



of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that



any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 4. Section 19283 of the Revenue and Taxation Code is amended to read:

19283. The Department of Justice, in consultation with the Franchise Tax Board, shall examine ways to enhance the use and effectiveness of this article through integration with the Department of Justice's Wanted Persons System and shall report the findings and recommendations to the Legislature on or before January 1, 2002.



Approved _____, 2004

Governor

